

REMARKS/ARGUMENTS

As an initial matter, the Applicant and the undersigned would like to thank the Examiner for the opportunity to discuss the final Office Action during the personal interview held on October 15, 2010. At the interview, claims 1, 16 and 21 were discussed in view of US 6,030,023 (Guillez) and US 4,654,930 (Lautenschläger, Jr. et al.).

In particular, the undersigned argued that a person of ordinary skill would not have been motivated to combine the teachings of Guillez with Lautenschläger for at least the following three reasons:

i. Guillez teaches a cross member 2 that pivots forwardly and downwardly, so that the cross member 2 is stored out of the way of the movement path of the roof 3 when the roof 3 is being moved into the trunk 4. This is necessary because a hard top roof 3 will ordinarily be moved into the trunk 4 at an angle between vertical and horizontal. Thus, it would be undesirable to have the cross member 2 extend vertically above the back plate 11, thereby obstructing the roof movement path.

If the hinge 10 of Lautenschläger were to be simply substituted for the hinge arrangement 8-10, 14 of Guillez, the cross member 2 of Guillez would move to an open position such that the cross member 2 is disposed above and rearward of the closed position (i.e. vertically extending above the back plate 11), thereby possibly (undesirably) striking the roof 3 and certainly obstructing the pathway for the movement of the roof 3 into the trunk 4. This can be understood by viewing the hinge 10 and door 12 of Lautenschläger after rotating Figs. 1 and 2 by 90° in the clockwise direction.

If the cross member 2 extends above the top of the back plate 11, the roof 3 must be moved around the obstructing cross member 2, which would have, at minimum, complicated the kinematics of the roof opening operation, thereby giving a strong disincentive to the person of ordinary skill to utilize the hinge arrangement of Lautenschläger.

ii. Guillez actuates the spring-loaded hinge 8-10, 14 by pulling the member 8 downward using Bowden cable 6. This actuation arrangement provides a very simple means for opening the cross member 2 and does not require an additional power source, as the movement of the lid 1 can be effectively utilized also to move the cross member 2.

If the hinge 10 of Lautenschläger were to be simply substituted for the hinge arrangement 8-10, 14 of Guillez, the person of ordinary skill would have recognized that the Bowden cable 6, 7 could not be used to actuate the hinge 10 of Lautenschläger, because it would not be possible to pivot the door 12 of Lautenschläger (i.e. corresponding to cross member 2 of Guillez) by pulling downwardly on the edge of the door 12 closest to the hinge 10 or by pulling downward (counterclockwise) on inner link 22. The door 12 of Lautenschläger is designed to be opened by outwardly pulling the edge of the door 12 that is farthest from the hinge 10 and the inner link 22 will actually rotate in the clockwise direction during the opening movement, rather than in the counterclockwise direction, which would be required so as to be able to use the downward pulling force of the Bowden cable 6.

Thus, the person of ordinary skill would have been disinclined to modify Guillez with the hinge 10 of Lautenschläger due to the need to further provide an alternative actuation means for moving the cross member 2 of Guillez into the opened position. In particular, it would not be possible to apply an upward force to the rearward edge of cross member 2 of Guillez in a simple manner, thereby further discouraging the person of ordinary skill from modifying Guillez with the hinge of Lautenschläger.

iii. In order to move the door 12 and hinge 10 of Lautenschläger from the open position back to the closed position, a lateral force is applied to the terminal end of the door 12 that is farthest from the hinge 10. Thus, if the hinge 10 of Lautenschläger were to be simply substituted for the hinge arrangement 8-10, 14 of Guillez, the person of ordinary skill would have recognized that a more complex device for closing the cross member 2 would be required, thereby further teaching away from a combination of Guillez and Lautenschläger.

Thus, it was respectfully submitted that a person of ordinary skill would not have combined Guillez and Lautenschläger to achieve the presently claimed invention.

Furthermore, the first feature of claim 10 was discussed and it was agreed that the curvature of the leaf spring 34 of Lautenschläger does not lie within an angle (α) traversed by the wall element during its pivoting movement. Thus, neither Guillez nor Lautenschläger teaches or makes obvious this feature.

Lastly, as a legal matter, it is also noted that Lautenschläger comes from the cabinet door field, which is relatively remote from the convertible automobile field. By utilizing Lautenschläger, a position is being taken that it would be “obvious to try” any type of hinge, i.e.

there are an infinite number of solutions. However, this evidentiary basis is inconsistent with Section C of the 2010 KSR Guidelines Update (published in the Federal Register on Sept. 1, 2010), which states in pertinent part, “this [obvious to try] rationale is only appropriate when there is a recognized problem or need in the art; there are a finite number of identified, predictable solutions to the recognized need or problem; and one of ordinary skill in the art could have pursued these known potential solutions with a reasonable expectation of success.” (Emphasis added).

Therefore, it is respectfully submitted that the “obvious to try” rationale may not be utilized as a basis for an obviousness rejection in the present situation, in which it is implicitly contended that there are an infinite number of possible substitutions for the hinge of Guillez.

In addition or in the alternative, the “obvious to try” rationale is not satisfied for the above-noted reasons explaining why the person of ordinary skill could not have pursued a substitution of the Lautenschläger hinge into the Guillez design with a reasonable expectation of success.

Claims 1, 16 and 21 presented herein have been amended to recite the feature of claim 10 and the claims dependent therefrom have been amended to be consistent with the new independent claims.

Support for the amendment of claims 1, 16 and 21 can be found, e.g., in previously pending claim 10.

It is noted that the term “actuation device” has been removed from claim 16 because it simply referred to the spring element and did not provide any other limitation having patentable weight. Thus, it was superfluous and could be removed without affecting the claim scope.

As indicated in the Interview Summary, the Examiner agreed to enter and further consider such amended claims.

It is therefore believed that all the pending claims are patentable and an early Notice of Allowance is respectfully solicited.

Finally, if the Examiner believes that a further interview, either telephonic or in person, will advance the prosecution of this application, it is respectfully requested that the Examiner contact the undersigned at the Examiner's convenience.

Respectfully submitted,

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